

## **FISCAL NOTE**

### **HB 1184 - SB 1661**

March 14, 2007

**SUMMARY OF BILL:** Increases the penalty for the offense of aggravated sexual battery when the victim is less than 13 years of age, from a Class B felony with a sentencing range of eight to 30 years to a Class A felony with a minimum sentence of 25 to 40 years. Increases the penalty for the Class A felony offense of rape of a child with a sentencing range of 15 to 60 years to a minimum sentence of 25-40 years. Rape of a child and aggravated rape of a child may be punishable by death, life imprisonment, or life without parole. Requires the Board of Probation and Parole (BOPP) to monitor such offenders using a global positioning system (GPS) for the full extent of such person's probation or parole if the victim is a minor and the defendant is at least 18 years of age.

#### **ESTIMATED FISCAL IMPACT:**

**Increase State Revenues - \$47,900 First Year  
\$59,800 Each Succeeding Year**

**Increase State Expenditures - \$34,278,600 / Incarceration\***

**\$6,406,800 First Year &  
\$7,540,700 Each Succeeding Year**

**\$89,000 One-Time First Year &  
\$11,000 Each Succeeding Year**

**Other Fiscal Impact – It is estimated that an average of one offender per year will receive a death sentence. If a death sentence offender serves an average of 20 years before the sentence is carried out, there will be no significant additional incarceration costs for the death-sentenced offender, apart from the cost of the execution. The cost of executing each inmate will exceed \$15,000. The cost to the state of trials and appeals from death-sentenced offenders is substantially higher than for other cases. It is estimated that the additional cost of trials and appeals from death sentences will exceed \$750,000 for each case.**

**(Funding of \$7,690,700 is included in the Governor's FY07-08 Recommended Budget)**

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Assumptions:

- Public defenders and district attorneys general will require additional resources for trial and appeal of additional death and life without parole cases. Supreme Court rules require appointment of two defense attorneys in each death penalty case, and specialized training. Reimbursement rates for appointed defense counsel are higher in death cases. Attorneys handling death cases are subject to greater limitations on their caseloads, requiring additional attorneys to handle other cases.
- According to BOPP, there will be 798 offenders subject to GPS monitoring (in addition to the 375 offenders currently in the pilot project) in the first year. This total includes existing sex offenders plus newly released offenders. 198 additional offenders will be subject to GPS monitoring in each subsequent year. Offenders will be subject to monitoring an average of 13.5 years.
- GPS offenders are required to pay \$600 per year to cover monitoring costs; however, according to BOPP, 90% of the GPS offenders are indigent and unable to pay. In the first year, BOPP will have a total of 798 new offenders on the GPS program ( $798 \times \$600 = \$478,800$ ). Ten percent of those will pay \$47,880. In the second and subsequent years, an additional 198 offenders on the GPS program ( $198 \times \$600 = \$118,800$ ). Ten percent of those will pay \$11,880.
- BOPP will incur monitoring costs of \$2,038,890 in the first year ( $798 \times \$2,555$  (equipment costs)) and additional costs of \$505,890 ( $\$2,555 \times 198$ ) in the second year (and subsequent years) for newly released offenders. The total monitoring cost, up to year 14, is \$2,544,780. After year 14, the costs will decline as offenders complete their supervision and leave the system.
- BOPP will require 107 additional positions to implement this system state-wide, including GPS technical positions, case officers, and information systems staff. The cost of these positions is \$4,095,251 recurring and \$65,940 one-time in the first year, and an additional \$628,004 recurring and \$10,990 one-time in the second and each subsequent year.
- Based on a sampling of FY05 admissions to the Department of Correction (DOC) for aggravated sexual battery, 85 percent involved victims less than 13 years of age. In FY06, there were 91 admissions to DOC for aggravated sexual battery and DOC assumes that 85 percent (77) of those would be sentenced as a Class A felony with a minimum sentence of 25 to 40 years.
- According to the U.S. Census Bureau, population growth in Tennessee has averaged 1.09 percent per year for the past ten years.
- Seventy-seven offenders will be convicted of aggravated sexual battery involving a victim less than 13 years of age in the first year. Population growth of 1.09 percent will result in nine additional offenders serving

additional time in the tenth year after the sentence increase is added to time currently served. The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 86 offenders serving additional time on their sentences.

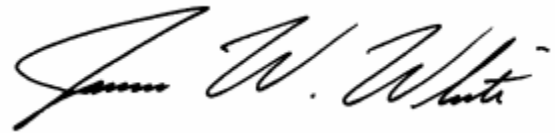
- Eighty-six offenders will serve an additional 24.5 years (an increase from 8 years to 32.5 years). According to DOC, the average operating cost per inmate per day for calendar year 2007 is \$60.16. The cost per inmate at 8 years is \$175,787.52 (\$60.16 x 2,922 days). The cost per inmate at 32.5 years is \$714,137.10 (\$60.16 x 11,870.63 days). The cost per inmate in the tenth year is \$219,734.40 (\$60.16 x 3,652.50 days). The total additional operating cost for 86 offenders in the tenth year is \$18,897,158.40 (\$219,734.40 x 86).
- An average of 64 persons has been convicted of rape of a child in each of the past five years, according to the Administrative Office of the Courts (60), and DOC (68). The average age of each offender is 39 years, and the life expectancy of each offender is 70 years.
- Persons convicted of this offense currently serve an average of 20 years. One of the 64 offenders will receive a death sentence. Each non-death sentenced offender will serve an average of 31 years.
- Sixty-three persons will be convicted for the offense of rape of a child in the first year and will receive a non-death sentence. Population growth of 1.09 percent per year will result in seven additional offenders serving additional time in the tenth year after the sentence increase is added to time currently served. The maximum cost in the tenth year is based on 70 offenders serving additional time on their sentences.
- Seventy offenders will serve an additional 12.5 years (an increase from 20 years to 32.5 years). The cost per inmate at 20 years is \$439,468.80 (\$60.16 x 7,305 days). The cost per inmate at 32.5 years is \$714,138.30 (\$60.16 x 11,870.63 days). The cost per inmate in the tenth year is \$219,734.40 (\$60.16 x 3,652.50 days). The total additional operating cost for 70 offenders in the tenth year is \$15,381,408 (\$219,734.40 x 70).
- Recurring costs of \$272,700 reflect two additional assistant public defender positions and one assistant district attorney position including salaries, benefits, and other related costs. One-time costs of \$23,100 reflect the computer equipment, furniture, and other related costs.
- Tennessee has executed two inmates in the past 47 years. One execution occurred in 2000, at a cost in excess of \$11,000. The second execution occurred in 2006, at a cost in excess of \$15,000.
- The state incurs substantial out-of-pocket expenses in death-sentence trials and appeals. These include costs of appointed attorneys, expert witnesses, investigation, and related matters. These additional costs are estimated to exceed \$750,000 in each case.
- Under current law, BOPP has discretionary authority to implement GPS monitoring as a part of community supervision. BOPP is conducting

GPS monitoring of sex offenders on a limited, pilot project basis. BOPP will require additional personnel and equipment state-wide to implement mandatory Global Position System monitoring of released offenders.

*\*Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

**CERTIFICATION:**

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "James W. White". The signature is fluid and cursive, with the first name "James" written in a smaller, more compact script than the last name "White".

James W. White, Executive Director